

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

IN RE: JUUL LABS, INC.,
MARKETING, SALES PRACTICES,
AND PRODUCTS LIABILITY
LITIGATION,

Case No. 19-md-02913-WHO

**JOINT CASE MANAGEMENT
CONFERENCE STATEMENT AND
PROPOSED AGENDA**

This Document Relates to:

ALL ACTIONS

Pursuant to Civil Local Rule 16-10(d), Plaintiffs' Co-Lead Counsel as well as counsel to the eleven personal injury plaintiffs who have elected to opt out from Plaintiffs' settlement with JLI and/or Altria ("PI opt-outs"), counsel to Defendant Juul Labs, Inc. ("JLI"), counsel to the JLI Settling Defendants¹, counsel to the independent retailer Defendants, and counsel to Defendants Altria Group, Inc., Philip Morris USA, Inc., Altria Client Services LLC, Altria Enterprises LLC, and Altria Group Distribution Company ("Altria"), (collectively referred to herein as the "Parties") respectfully provide this Joint Case Management Statement in advance of the Further Case Management Conference scheduled for August 13, 2024.

I. PARTICIPANT INFORMATION

The August 13, 2024 CMC will proceed by Zoom. Anyone who wishes to attend the conference virtually may log in using the information available at: <https://www.cand.uscourts.gov/judges/orrick-william-h-who/>.

II. ISSUES TO BE DISCUSSED AND PROPOSED AGENDA

1. Status of Case Filings and Dismissals

2. CMO 5 Amendment

¹ Specifically the JLI Settling Defendants include: JUUL LABS, INC., previously d/b/a PAX LABS, INC. and PLOOM INC.; JAMES MONSEES; ADAM BOWEN; NICHOLAS PRITZKER; HOYOUNG HUH; RIAZ VALANI; MOTHER MURPHY'S LABS, INC.; ALTERNATIVE INGREDIENTS, INC.; TOBACCO TECHNOLOGY, INC.; eLIQUITECH, INC.; MCLANE COMPANY, INC.; EBY-BROWN COMPANY, LLC; CORE-MARK HOLDING COMPANY, INC.; CHEVRON CORPORATION; CIRCLE K STORES INC.; SPEEDWAY LLC; 7-ELEVEN, INC.; WALMART; WALGREENS BOOTS ALLIANCE, INC.

1 **3. Opt Out Plaintiffs**

2 **4. Tribal Cases**

3 **III. STATUS OF CASE FILINGS AND DISMISSALS**

4 **1. JLI**

5 **a. MDL**

6 As of August 7, 2024, JLI and JLI Settling Defendants have settled claims with 5,023²
7 plaintiffs (3,499 personal injury plaintiffs, 1,492 government entities, and 32 tribes (“Settling
8 Plaintiffs”)) in this MDL. The settlement agreement requires Settling Plaintiffs to voluntarily
9 dismiss their claims with prejudice against JLI and JLI Settling Defendants. Most Settling Plaintiffs
10 have done so.

11 As of August 7, 2024, 15 minor Personal Injury Settling Plaintiffs have not dismissed their
12 claims with prejudice and have deferred filing voluntary dismissals due to their minor status, which
13 requires court approval of settlement amounts. A list of these plaintiffs is attached hereto as **Exhibit**
14 **A**. These cases will be dismissed upon the completion of minor settlement processes, including
15 approval of agreed-upon allocations by Hon. Gail A. Andler under Case Management Order No.
16 20.

17 In addition, 153 plaintiffs in this MDL have active cases against JLI and (in some cases)
18 JLI Settling Defendants. Upon information and belief, these plaintiffs include:

- 19 • Eleven (11) Personal Injury Opt-Out Plaintiffs, discussed *infra*;
- 20 • Three (3) Tribal Plaintiffs that filed their claims after the settlement,
21 discussed *infra*;
- 22 • Settling Plaintiffs who had duplicate actions, only one of which was
23 properly dismissed;
- 24 • Former minor Settling Personal Injury Plaintiffs who have reached the age
25 of majority and now must dismiss their claims with prejudice; and
- 26 • Settling Government Entity Plaintiffs that properly dismissed their cases in

27 ² The numbers in this Statement reflect the Parties’ good-faith estimates based on reasonably
28 available information. The Parties will continue to work together to align their data and resolve any
inconsistencies.

the JCCP but were removed by Altria to this MDL.

JLI will work with Plaintiffs' Leadership to ensure that actions still pending against JLI are dismissed with prejudice as appropriate under the settlement and this Court's Case Management Orders.

b. JCCP

As of August 7, 2024, 28 cases are pending in the JCCP against JLI and some of the JLI Settling Defendants. This Court rejected Requests for Dismissal filed by 11 adult Personal Injury Settling Plaintiffs for filing errors; corrected Requests are now pending. One adult Personal Injury Settling Plaintiff has not filed a Request for Dismissal. This personal injury plaintiff is a former minor plaintiff who has reached the age of majority. Six (6) minor Settling Personal Injury plaintiffs have deferred filing of Requests for Dismissal pending approval of agreed-upon allocations by Hon. Gail A. Andler under Case Management Order No. 18. Nine (9) Personal Injury Plaintiffs and one Government Entity Plaintiff³ opted out of the settlement and continue to litigate their claims.

2. Altria

As announced on May 10, 2023 during the *SFUSD* trial, Plaintiffs and Altria reached an agreement that created settlement programs to resolve the class, personal injury, and government entity cases as to Altria.

The Court granted final approval of the class settlement on March 14, 2024. ECF No. 4212. Altria funded the class settlement on May 13, 2024, and administration of the Altria class settlement is discussed further in Section V, *infra*.

Altria also funded the personal injury and government entity settlements on May 13, 2024. In connection with the implementation of the personal injury settlements, Case Management Order 18 ("CMO 18") requires participating personal injury plaintiffs to dismiss their claims within 15 days of Altria's payment of the personal injury settlement. A number of participating personal injury plaintiffs participating in the settlement have dismissed their claims as required, and Altria

³ JLI and the Government Entity Opt-Out, the City of Baltimore, *Mayor and City Council of Baltimore v. Juul Labs, Inc.*, 20STCV21633, have negotiated and executed a settlement agreement and dismissal of the City's claims is expected in the near term.

1 is working with Plaintiffs' Leadership regarding the dismissals of the outstanding participating
 2 personal injury plaintiffs' claims. The personal injury plaintiffs who have opted out of the personal
 3 injury settlement are discussed in Section IV, *infra*.

4 With respect to the government entity settlement, all of the eligible government entities are
 5 participating in the settlement. Altria filed a notice of claims ripe for dismissal with prejudice for
 6 all government entity cases on July 11, 2024. ECF No. 4277.

7 **IV. CMO 5 AMENDMENT**

8 After the next time and expense report due to the Court is delivered (currently due September
 9 15), Co-Lead Counsel anticipate moving the Court to amend CMO 5 to simplify time-and-expense
 10 reporting going forward. At this point, the common litigation has moved into a settlement
 11 implementation posture. As a result, the volume of common benefit work has been reduced, and is
 12 now primarily being conducted by the Co-Lead firms. At the same time, ongoing reporting to Verus
 13 and review by Judge Andler imposes significant costs. And, with the exception of common benefit
 14 fees and expenses anticipated from the tribal Altria settlement, the Court has fully allocated all
 15 common benefit fees and expenses, making ongoing time data of limited utility. For these reasons,
 16 Co-Lead Counsel anticipate moving to modify CMO 5 to eliminate ongoing time reporting
 17 obligations, and to require only that Held Costs be reported to Co-Lead Counsel for possible
 18 inclusion in future reimbursement requests.

19 **V. OPT OUT PLAINTIFFS**

20 Eleven personal-injury plaintiffs in the MDL opted out from the settlement among JLI, the
 21 JLI Settling Defendants, and Plaintiffs and the settlement between Altria and Plaintiffs. Ten
 22 plaintiffs are represented by the Schlesinger firm (the "Schlesinger Opt-Outs") and one is
 23 represented by TorHoerman law—Jay Patel, *Jay Patel et al. v. Juul Labs, Inc. et al.*, 3:20-cv-06985.

24 **1. The Schlesinger Opt-Outs**

25 The Additional Discovery period contemplated in Case Management Order Nos. 17 and
 26 19 is underway and will proceed under the Scheduling Orders that this Court entered on July 16,
 27 2024 (ECF No. 4278; *McKnight v. Juul Labs, Inc., et al.*, 3:20-cv-2600, ECF No. 45). With one
 28 exception, *see infra*, Plaintiffs filed amended, long form complaints as required by the Scheduling

1 Orders.

2 **a. *NesSmith v. Juul Labs, Inc., et al.***

3 Plaintiff Ashlynn NesSmith recently passed away. Plaintiff's counsel has advised JLI that
4 they are working on opening an estate for Ms. NesSmith and expect to file an amended, long form
5 complaint within 90 days. JLI does not object to this course of action, but requests that the
6 Additional Discovery and motion deadlines under this Court's July 16, 2024, Scheduling Order
7 (ECF No. 4278) be moved 90 days to accommodate this extension.

8 **b. *McKnight v. Juul Labs, Inc., et al.***

9 In the Order on Discovery Dispute dated May 14, 2024 (ECF No. 37) (the "Discovery
10 Order"), the Court ordered (1) Mr. McKnight to produce documents in response to Defendants'
11 requests for production and (2) the Parties to promptly schedule and take a 3.5-hour discovery
12 deposition of Mr. McKnight.

13 **Plaintiff's Position**

14 On June 11, Plaintiff's counsel provided Defendants with three dates of Walker McKnight's
15 availability to take his discovery deposition, July 8-10. To accommodate Defendants' schedules,
16 the McKnight deposition was then set for July 23. On July 17, however, the Schlesinger Firm
17 notified Defendants that the deposition needed to be postponed. Of note, Mr. McKnight was
18 hospitalized that week. Mr. McKnight has proposed rescheduling the deposition during the week
19 of either September 9 or 16.

20 Mr. McKnight responded to Defendants' first set of requests for production of documents
21 on June 18. Given the robust productions made pursuant to CMO 17, Mr. McKnight did not
22 produce additional responsive documents. The Court's order on the Discovery Dispute provided
23 that Mr. McKnight respond to three of the requests for production. The first request sought
24 documents Mr. McKnight consulted to complete his fact sheets. Mr. McKnight told Defendants
25 which set of medical records were consulted to answer the fact sheet questions. These documents
26 had been produced pursuant to CMO 17. The second request involved documents consulted in
27 completing an affidavit pursuant to CMO 19. Mr. McKnight responded by identifying a document
28 that is protected by attorney-client privilege, and submitted a privilege log on same. The third

1 request sought documents reflecting the basis of allegations against Non-JLI defendants. Mr.
 2 McKnight pointed Defendants to his fact sheet, general expert reports, case specific reports of Dr.
 3 Winickoff and Dr. Prochaska, and the general discovery taken to date. Defendants served a
 4 deficiency letter on July 15. On July 29, Mr. Haberman spoke with Mr. Danninger and told him
 5 that a response would be forthcoming. Mr. McKnight's counsel will respond to the deficiency
 6 letter by August 8.

7 Defendants request modification of the Court's order to allow a seven-hour deposition of
 8 Mr. McKnight. The Court should overrule that request. The need to preserve Mr. McKnight's
 9 testimony has not abated. Mr. McKnight is frequently hospitalized due his condition. In fact, he
 10 was hospitalized the week the parties planned on taking his deposition. A three-and-a-half hour
 11 discovery deposition is sufficient for purposes of preparing for a trial preservation cross-
 12 examination. Defendants point out that some time has passed from the Court's order on the issue.
 13 But it must be mentioned that lag was due, in part, to accommodating Defendants' request to depose
 14 Mr. McKnight in the week of July 22.

15 **Defendants' Position**

16 This Court's May 14, 2024 Order required the parties to take Mr. McKnight's deposition
 17 promptly. The Schlesinger Firm waited until June 11 to contact Defendants about the deposition
 18 and sought to schedule it for July. One week later, the Schlesinger Firm notified Defendants that
 19 Mr. McKnight would produce no documents in response to Defendants' requests for production.
 20 Defendants nonetheless agreed to schedule the deposition for July 23. The Schlesinger Firm then
 21 cancelled the deposition on July 17. *See Exhibit B.* The Schlesinger Firm did not reschedule the
 22 deposition because of (or even mention) Mr. McKnight's hospitalization; it instead said it had "two
 23 trials" and "they're both interfering with this deposition." *Id.* Despite promising to "get
 24 [Defendants] dates in the near future to get [the deposition] done," the Schlesinger Firm did not
 25 seek to reschedule the deposition until the date of this filing – *after* it had received an earlier version
 26 of this position statement noting that the Schlesinger Firm had not tried to reschedule the deposition.
 27 Likewise, JLI objected to Mr. McKnight's insufficient production by letter dated July 15, and the
 28 Schlesinger Firm still has not responded. Its above commitment to respond to the letter on August

8 had not previously been communicated to Defendants.

Defendants respectfully request that this Court modify its May 2024 order to allow a seven-hour discovery deposition of Mr. McKnight because the Additional Discovery period has started and provides for depositions of that length. *See* CMO No. 17 ¶ 48 (“During such Additional Discovery, the Parties are permitted to: (a) take the depositions of the Plaintiff . . . for up to seven (7) hours each.”). There is good cause for modification because, in May, there was no tension between the Court’s order and CMO No. 17 because the Additional Discovery period had not started. The Schlesinger Firm’s representations⁴ also created an “expectation” that the deposition procedures set forth in the Court’s order would “be conducted and concluded promptly” – i.e., before the start of Additional Discovery. *See* Dkt. 37 at 2. But despite Defendants’ efforts, the deposition did not happen promptly. Defendants do not seek to modify other aspects of the Court’s order and remain committed to preserving Mr. McKnight’s testimony expeditiously after completion of the discovery deposition.

2. Patel

JLI’s Position

Mr. Patel has not met his initial discovery obligations under CMO Nos. 17 and 19. JLI and counsel for Mr. Patel met and conferred in the fall regarding the deficiencies in Mr. Patel’s initial productions, at which time JLI agreed to stay any further action and afford Mr. Patel time to remedy the deficiencies in his production and complete initial productions. Altria and counsel for Mr. Patel have also met and conferred concerning Mr. Patel’s obligations under CMO No. 19. As of August 7, 2024, Mr. Patel still has not met certain discovery obligations, and the case remains stayed.

Mr. Patel has refused to produce mental health records and has refused to produce “[a] Rule 26(a)(2) expert report describing all of the Litigating Plaintiff’s alleged damages” as required by CMO No. 17 Section IV(A)(b)(4) (“All Litigating Personal Injury Plaintiffs shall serve, within the timeframe provided in Section VI, expert reports in compliance with Federal Rule of Civil

⁴ For example, the Schlesinger Firm said at a May 6 hearing that Mr. McKnight has “one foot on a banana peel and the other in the grave,” and therefore the Firm “desperately need[ed] to preserve Mr. McKnight’s testimony as soon as possible.” Dkt. 4229 at 14:20-22, Transcript of Proceedings by Zoom Webinar, Case No. 19-md-02913-WHO (N.D. Cal. May 6, 2024).

Procedure 26 as follows: ... (4) A Rule 26(a)(2) expert report describing all of the Litigating Plaintiff's alleged damages[.]”); *see also* CMO No. 19 Section IV(A)(b)(4). The report Mr. Patel has produced opines nowhere on damages—i.e., the monetary amount he believes would adequately compensate Mr. Patel for his alleged injuries. The report, thus, does not satisfy CMO No. 17 and CMO No. 19's requirement that Mr. Patel produce an expert report regarding damages, and Mr. Patel remains noncompliant with CMO No. 17 and CMO No. 19. JLI has advised Mr. Patel that Defendants intend to file a Motion for an Order to Show Cause based on these remaining deficiencies and as contemplated by CMO Nos. 17 and 19.⁵

Plaintiff's Position

There is one outstanding medical record that plaintiff anticipates receiving sometime in the next 14 days. Once that is received, Plaintiff's position is that all obligations pursuant to CMO Nos. 17 and 19 will be complied with. There are at least two other discovery issues (defendants request for mental health records, and defendants request for a specific computation of non-economic damages) that will require court intervention. The parties have met and conferred on those two issues and Plaintiff's understanding is that the defendant(s) will file motions on those two issues as they see fit, once the final medical record request has been received.

VI. CLASS SETTLEMENT ADMINISTRATION

On April 24, 2024, Class Counsel filed an update regarding the administration of the JLI and Altria Class Action Settlements, proposing Class Counsel's and the Settlement Administrator's plan regarding the identification and handling of fraudulent claims for the Court's approval. ECF No. 4218. Class Counsel also filed a motion to file under seal the accompanying declaration by the Settlement Administrator, detailing the analysis of fraudulent claims. ECF No. 4217. Class Counsel and a representative from Epiq will be prepared to discuss the proposed claims handling process, as well as administration expenses, at the Case Management Conference.

⁵ Plaintiff indicates that JLI has agreed to brief the outstanding discovery issues upon production of the final requested medical record. JLI has not agreed to any such issue and maintains that, should Plaintiff fail to comply with his obligations by August 15, 2024, it will move for an order to show cause.

1 **VII. JLI TRIBAL CASES**

2 Three tribal plaintiffs—the Choctaw Nation of Oklahoma, the Chickasaw Nation, and the
3 Muscogee (Creek) Nation (the “JLI Litigating Tribes”)—filed their claims after the tribal settlement
4 cutoff date of October 21, 2022, as contemplated by the Case Management Order No. 16.
5 Accordingly, the JLI Litigating Tribes are subject to the discovery and procedures contemplated by
6 CMO No. 17.

7 The JLI Litigating Tribes have completed their initial productions as contemplated by CMO
8 No. 17. On January 11, 2024, the JLI Litigating Tribes, JLI, and the JLI Settling Defendants
9 participated in one single mediation conducted by Settlement Master Perrelli. Mediation has been
10 recessed to allow JLI and the JLI Litigating Tribes to continue to exchange information and discuss
11 possible resolution.

12 **VIII. ALTRIA TRIBAL CASES**

13 The Tribal Leadership Steering Committee, in coordination with Plaintiffs’ Lead Counsel
14 (“PLC”), and Altria have entered into a settlement that the parties are in the process of
15 implementing pursuant to Case Management Orders 22 and 23.

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Dated: August 7, 2024

Respectfully submitted,

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